

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE

In the Matter of)	
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)	
JANE HADDEN ALPERSON)	Case No. <u>96-02D</u>
)	
)	

ORDER

The Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce ("Department"), having determined to initiate administrative proceedings pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 and Supp. 1996))¹ the "Act", and the Export Administration Regulations (15 C.F.R. Parts 768-799 (1995), as amended (61 Fed. Reg. 12714 (March 25, 1996))² (the "Regulations"), against Jane Hadden Alperson

¹/ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996) and August 14, 1996 (61 Fed. Reg. 42527, August 15, 1996), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1996)).

²/ The relevant events occurred in 1991 and 1992. The governing Regulations are found in the 1991 and 1992 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1991 and 1992)). Those Regulations are referred to hereinafter as the former Regulations. Since that time the Regulations have been reorganized and restructured; the restructured regulations are to be codified at 15 C.F.R. Parts 730-774.

"Alperson"), an individual, resident in the State of Maryland, based on the allegations set forth in the Proposed Charging Letter, dated February 25, 1997, attached hereto and incorporated herein by this reference;

The Department and Alperson, having entered into a Settlement Agreement, incorporated herein by this reference, whereby Alperson has agreed to settle this matter; and

The Assistant Secretary for Export Enforcement having approved the terms of the Settlement Agreement;

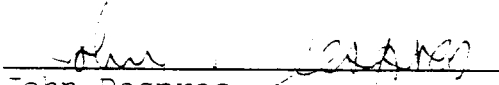
IT IS THEREFORE ORDERED THAT,

FIRST, a civil penalty in the amount of \$20,000 is assessed against Alperson;

SECOND, payment of the civil penalty will be suspended and waived as of the entering of this Order;

THIRD, the Proposed Charging Letter, the Settlement Agreement and this Order shall be made available to the public and a copy of this Order shall be served upon Alperson.

This Order is effective immediately.


John Despres
Assistant Secretary for
Export Enforcement

Entered this 26TH day of FEBRUARY, 1997.

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UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE

In the Matter of)	
)	
)	Case No. <u>96-02D</u>
Jane Hadden Alpersen)	
)	
)	

SETTLEMENT AGREEMENT

This agreement is made by and between Jane Hadden Alpersen ("Alpersen") and the United States Department of Commerce, pursuant to Section 766.18 of the Export Administration Regulations (15 C.F.R. Parts 768-799 (1995), as amended (61 Fed. Reg. 12714 (March 25, 1996)) (the "Regulations"), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1996)) (the "Act").

^{1/} The relevant events occurred in 1991 and 1992. The governing Regulations are found in the 1991 and 1992 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1991 and 1992)). Those Regulations are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations are to be codified at 15 C.F.R. Parts 730-774.

^{2/} The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)) and August 14, 1996 (61 Fed. Reg. 42527, August 15, 1996), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§1701-1706 (1991 & Supp. 1996)).

WHEREAS, the Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce ("Department"), has notified Alperson of its intention to initiate an administrative proceeding against her pursuant to Section 11(c) of the Export Administration Act of 1979 (the "Act"), by issuing the Proposed Charging Letter, dated February 25, 1997, a copy of which is attached hereto and incorporated herein by this reference, alleging that Alperson violated Part 769 of the former Regulations, promulgated to implement the Act; and

WHEREAS, Alperson has reviewed the Proposed Charging Letter and is aware of the allegations against her and the administrative sanctions which could be imposed against her, if the allegations were found to be true; Alperson fully understands the terms of this Settlement Agreement, and enters into this Settlement Agreement voluntarily and with full knowledge of her rights; and Alperson states that no promises or representations have been made to her other than the agreements and considerations herein expressed; and

WHEREAS, Alperson neither admits nor denies the truth of the allegations, but wishes to settle and dispose of the allegations made in the Proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, Alperson agrees to be bound by the appropriate

Order ("Order") when entered;

NOW THEREFORE, Alperson and the Department agree as follows:

1. Under the Act and the Regulations, the Department has jurisdiction over Alperson with respect to the matters alleged in the Proposed Charging Letter.
2. The Department will impose a civil penalty on Alperson in the amount of \$20,000. The Department will suspend and waive payment of the civil penalty upon entering the Order.
3. Subject to the approval of this Settlement Agreement, pursuant to paragraph 8 hereof, Alperson waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement Agreement or the Order, when entered) including, without limitation, any right to:
 - a. an administrative hearing regarding the allegations in the Proposed Charging Letter;
or
 - b. seek judicial review or otherwise contest the validity of this Settlement Agreement or the Order, when entered.

4. The Department, upon entry of the Order, will not subsequently initiate any further administrative or judicial proceedings, or make any referral to any agency of the United States government or to any other entity for possible enforcement action or other action of any kind against Alperson, with respect to any alleged violation of Section 8 of the Act or Part 769 of the former Regulations arising out of the transactions set forth in the Proposed Charging Letter or any other transaction that was disclosed to or reviewed by the Department in the course of its investigation.
5. Alperson understands that the Department will disclose publicly the Proposed Charging Letter, this Settlement Agreement and the Order, when entered.
6. This Settlement Agreement is for settlement purposes only, and does not constitute an admission by Alperson that she has violated the Regulations or an admission of the truth of any allegation contained in the Proposed Charging Letter or in this Settlement Agreement. Therefore, if this Settlement Agreement is not accepted and the Order not entered by the Assistant Secretary for Export Enforcement, the Department may not use this Settlement Agreement against Alperson in any administrative or judicial proceeding.

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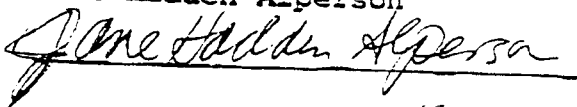
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7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the Order, when entered, nor shall this Settlement Agreement serve to bind, constrain or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances herein addressed.

8. This Settlement Agreement will become binding on the Department only when approved by the Assistant Secretary for Export Enforcement by entering the Order.

Jane Hadden Alpersen

Signed this 26th day of February, 1997

U.S. Department of Commerce


William V. Skidmore

Director

Office of Antiboycott Compliance

Signed this 26th day of February, 1997.



PROPOSED CHARGING LETTER

February 25, 1997

Ms Jane Hadden Alpersen
Office of Litigation Support
Todd Building
United States Department of Justice
Washington, D.C. 20530

Case No. 96-02D

Dear Ms. Alpersen:

The Office of Antiboycott Compliance, Bureau of Export Administration, United States Department of Commerce (hereinafter the "Department"), hereby charges that you, Jane Hadden Alpersen, have committed two violations of Section 769.2(b) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768-799 (1996), as amended (61 Fed. Reg. 12714, March 25, 1996)) (hereinafter the "Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1996)) (hereinafter the "Act"),² as set forth below.

At all times relevant to the violations of Part 769 of the former Regulations alleged herein, you were a United States resident or national and, therefore, a United States person as defined in Section 769.1(b)(1) of the Regulations.

With respect to the violations alleged herein, you engaged in activities that involved the sale, purchase, or transfer of goods or services (including information) between the United States and the Kingdom of Saudi Arabia, activities in the interstate or

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² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)) and August 14, 1996 (61 Fed. Reg. 42527, August 15, 1996), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1996)).



foreign commerce of the United States as defined in Section 769.1(d) of the Regulations.

You engaged in the prohibited activities described in Charges 1 and 2 below with intent to comply with, further, or support a restrictive trade practice or boycott fostered or imposed by a foreign country against a country friendly to the United States which is not itself the object of any form of boycott pursuant to United States law or regulation (hereinafter "unsanctioned foreign boycott"), as defined in Section 769.1(e) of the former Regulations.

Facts constituting violation:

Charge 1

Beginning in or about May 1991, the U.S. Department of Justice (hereinafter "Justice") was engaged in representing the Department of the Air Force (hereinafter the "USAF"), in connection with contract litigation. On or about November 19, 1991, you, in your capacity as Case Manager, Office of Litigation Support, Civil Division, United States Department of Justice (hereinafter "OLS/Justice"), met with representatives of the Air Force and two employees of CACI Inc. -- Commercial (hereinafter "CACI"), an OLS/Justice contractor providing litigation support to Justice in connection with its representation of the USAF, to discuss and plan for a microfilming project in Saudi Arabia. As part of its litigation support responsibilities, CACI had to arrange to film several million pages of documents in Saudi Arabia, which necessitated sending a team of people to Riyadh for several months. This microfilming project in Saudi Arabia came to be known as "Desert Shoot."

In the course of the meeting, an USAF officer provided information about travel to Saudi Arabia and about the criteria to be used for selecting the team of United States persons who would go to Saudi Arabia. In describing who could not go to Saudi Arabia, the USAF officer instructed you and the CACI employees that Jewish people were not allowed to go to Saudi Arabia and that even people with surnames that sounded like Jewish surnames could not go to Saudi Arabia.

On or about December 19, 1991, CACI prepared a draft of the Operations Plan for Desert Shoot and sent it to you at OLS/Justice for review. CACI's draft included the following language:

SCREENING/SELECTION PROCESS

* * *

I. Items to consider in the screening/selection process:

* * *

- e. It is recommended that no Jewish or Jewish surnamed individuals be selected to deploy. . . .
- f. No person with an Israeli stamped passport may use that passport while traveling to/in Saudi Arabia."

On or about December 27, 1991, you edited CACI's draft. With respect to the above-quoted language of Appendix 1, you deleted "It is recommended that" from item I.e. and replaced it with "No Jewish or Jewish surnamed individuals . . ." You added the following hand-written instruction to CACI next to the deleted text of Appendix 1:

"Confirm this w/ Col Hoover [arrow symbol]
JEWISH PEOPLE etc. CANNOT ENTER THE COUNTRY, PERIOD."

On or about January 14, 1992, CACI revised the Operations Plan in accordance with your instructions and resubmitted it to you for review. This revised version contained, inter alia, the language quoted below:

SCREENING/SELECTION PROCESS

* * *

I. SELECTION CRITERIA

* * *

- E. No Jews or Jewish surnamed personnel will be sent as part of the Document Acquisition Team because of cultural differences between Moslems and Jews in the region.
- F. No Israeli stamped passport, as per Saudi rules.

Between December 1991 and late April 1992, CACI, with your knowledge and approval, followed and applied the selection criteria in the Operations Plan in the selection of CACI and another contractor's employees for the Desert Shoot team. During this time, CACI sent to you a list of the other contractor's candidates who had volunteered to go to Saudi Arabia, as well as a list of CACI volunteers. On or about January 24 and February 10, 1992, CACI compiled and provided you with additional, revised lists of CACI staff proposed to be members of the Desert Shoot team, as well as proposed members from the other contractor. CACI used the selection criteria which provided, inter alia, that Jewish people and people with Jewish surnames would be excluded from the Desert Shoot team.

By clarifying the text of the discriminatory criterion in the Operations Plan, you violated Section 769.2(b) of the former Regulations by agreeing to discriminate against individuals who are United States persons on the basis of religion or national origin, an activity prohibited by Section 769.2(b) of the former Regulations and not excepted. By so doing, you committed one violation of Section 769.2(b) of the former Regulations.

Charge 2

You accompanied CACI employees on a trip to the offices of another contractor to interview certain employees to determine who could go to Saudi Arabia as part of the Desert Shoot team. During these interviews of the other contractor's employees, you applied the discriminatory selection criterion of the operations plan.

By applying the discriminatory selection criterion of the operations plan during the interviews of the employees referred to above, you refused to consider and to employ qualified U.S. persons who were Jewish or had so-called "Jewish surnames" for work on the Desert Shoot project in Saudi Arabia. Such refusal was a prohibited boycott-based discriminatory action against a U.S. person on the basis of religion, an activity prohibited by Section 769.2(b) of the former Regulations and not excepted. By so doing, you committed a second violation of Section 769.2(b) of the former Regulations.

Accordingly, an administrative proceeding is instituted against you pursuant to Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

- a. Denial of export privileges (see Section 764.3(a)(2) and Sections 788A.3(a)(1) and (2) of the Regulations);
- b. Exclusion from practice (see Section 764.3(a)(3) and Section 788A.3(a)(3) of the Regulations); and/or

c. The maximum civil penalty of \$10,000 per violation (see Section 764.3(a)(1) and Section 788A.3(a)(4) of the Regulations).

If you fail to answer the charges contained in this letter within 30 days after service, as provided in Section 766.6 of the Regulations, your failure will be treated as a default under Section 766.7.

You are further notified that you are entitled to an agency hearing on the record as provided by Section 766.6 of the Regulations if a written demand for one is filed with your answer. You are also entitled to be represented by counsel and, under Section 766.18 of the Regulations, to seek a settlement agreement.

Your answer should be filed with the Administrative Law Judge/Antiboycott Compliance, U.S. Department of Commerce, Room H-6839, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. In addition, a copy of your answer should be served on the Department at the address set out in Section 766.5 of the Regulations, adding "ATTENTION: Jeffrey E.M. Joyner, Esq." below the address. Please note that the room number for the Department is H-3839. Mr. Joyner can be contacted by telephone at (202) 482-5311.

Sincerely,

William V. Skidmore
Director
Office of Antiboycott Compliance